

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

STANLEY LEE BROWN, JR., et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action: 6:24cv00039
)	
THE CITY OF LYNCHBURG, et al.,)	
)	
Defendants.)	

**DEFENDANT OFFICER WATERMAN'S REPLY BRIEF IN SUPPORT OF
MOTION TO DISMISS**

Defendant LPD Officer Garrett Waterman, by counsel, respectfully submits this reply brief in support of his motion to dismiss the First Amended Complaint.

ARGUMENT

In their response in opposition to Officer Waterman's motion to dismiss (the "Response") [ECF 28], Plaintiffs argue that "[a]n alleged victim of sexual assault, need not plead with graphic specificity any additional objective physical injury." (Resp. at 1) (citing *Hygh v. Geneva Enterprises, Inc.*, 47 Va. Cir. 569 (1997)). Then Plaintiffs proceed to do just that. In doing so, Plaintiffs only reinforce Officer Waterman's argument that intentional infliction of emotional distress ("IIED") is not an appropriate vehicle to address the tactile wrongs alleged here. An argument that Plaintiffs failed to address in their Response—and thus conceded.

A claim for IIED seeks "liability in tort for a *nontactile wrong*." *Ruth v. Fletcher*, 237 Va. 366, 372 (1989) (emphasis added). Plaintiffs' vague allegations of emotional distress accompanying the alleged physical intrusion of a body cavity search do not fall under the IIED umbrella under Virginia law. Accordingly, Plaintiffs' IIED claims in Counts 5 and 12 of the First Amended Complaint should be dismissed.

CONCLUSION

For the foregoing reasons, Defendant LPD Officer Garrett Waterman respectfully moves for dismissal of Counts 5 and 12 from the First Amended Complaint with prejudice.

OFFICER GARRETT WATERMAN

By: /s/ John R. Fitzgerald
Jim H. Guynn, Jr. (VSB #22299)
John R. Fitzgerald (VSB #98921)
GUINN WADDELL, P.C.
415 S. College Avenue
Salem, Virginia 24153
Phone: 540-387-2320
Fax: 540-389-2350
Email: jimg@guynnwaddell.com
johnf@guynnwaddell.com
*Counsel for City of Lynchburg and
Officer Garrett Waterman*

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of November, 2024, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to:

M. Paul Valois
James River Legal Associates
7601 Timberlake Road
Lynchburg, VA 24502
Phone: (434) 845-4529
Fax: (434) 845-8536
Email: mvalois@vbclegal.com
Counsel for Plaintiffs

/s/ John R. Fitzgerald
Jim H. Guynn, Jr. (VSB #22299)
John R. Fitzgerald (VSB #98921)
GUINN WADDELL, P.C.
415 S. College Avenue
Salem, Virginia 24153
Phone: 540-387-2320
Fax: 540-389-2350
Email: jimg@guynnwaddell.com
johnf@guynnwaddell.com
*Counsel for City of Lynchburg and
Officer Garrett Waterman*